

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1821 of 2004

in

SPECIAL CIVIL APPLICATION No 10077 of 2003

with

CIVIL APPLICATION No 7840 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA

and

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

VICE PRESIDENT

Versus

BHATT JAYASHRIBEN SHANTILAL

Appearance:

1. LETTERS PATENT APPEAL No. 1821 of 2004
MR MANOJ N POPAT for Appellant No.
MR KEDAR B BINIWALE for Respondent No. 1
MR HD DAVE AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

and

HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 20/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

Against the judgment and order dated 16.2.2004 passed by the learned Single Judge of this court (Coram : Akshay H. Mehta, J.) allowing Special Civil Application No.10077/03 filed by the opponent No.1-original petitioner, the appellants-original respondent Nos.2 and 1 have filed the present appeal.

2. Learned counsel Mr.Popat for the appellant vehemently submitted that it is already held by the learned Single Judge of this court in case of P.K.KHALSA v. THE GUJARAT STATE SOCIAL WELFARE ADVISORY BOARD reported in 1995(2) G.L.H. 339 that the Board is not a State within the meaning of Article 12 of the Constitution of India. Without considering the same, learned Single Judge has allowed the writ petition. We could not find this contention being raised by the present appellant-original respondent Nos.1 and 2 before the learned Single Judge. However, Mr.Popat submitted that the day on which the matter was heard, he was not feeling well, therefore, he left the court and in his absence the matter came to be decided against him by the learned Single Judge. This is also clear from the judgment of the learned Single Judge that in his absence the learned Single Judge has decided the matter because he had left the court early as he was not feeling well. Be that as it may. In our considered opinion, instead of first approaching the learned Single Judge by way of review application, the appellants have unnecessarily approached this court by way of the present Letters Patent Appeal. They could have pointed out to the learned Single Judge the judgment of this court in case of P.K.KHALSA (supra) wherein it is held that the Board is not a State within the meaning of Article 12 of the Constitution of India, therefore, no writ would lie.

3. In view of the above, learned counsel Mr.Popat seeks permission to withdraw this appeal with a liberty to approach the learned Single Judge by way of review application with a request that delay in filing the same may be condoned. If the review application is filed within one month from today with an application for condonation of delay, then we request the learned Single Judge to consider and decide the same in accordance with law after condoning the delay.

4. With these observations, permission is granted to

withdraw this appeal. Accordingly, dismissed as withdrawn. Rule is discharged.

5. Civil Application for stay is dismissed as the main Letters Patent Appeal is dismissed as withdrawn. Interim relief granted stands vacated. Rule is discharged.

6. At this stage, a request is made by Mr.Popat to continue the said interim relief for a period of one month till he files review application. The request is reasonable, therefore, it is granted. Interim relief granted on Civil Application No.7840 of 2004 to continue for a period of one month.

(B.J.Shethna, J.)

(Sharad D. Dave, J.)

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